

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY KATHMANDU PRIORITY

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E.O. 11652: N/A

TAGS: PFOR, NP

SUBJECT: PRIVILEGES AND IMMUNITIES NON-DIPLOMATIC STAFF

REF: KATHMANDU 3589

1. REFTEL REPORTED DETENTION OF FSS NEWLAND FOLLOWING ACCIDENTAL STRIKING OF NEPALESE CITIZEN. EMBASSY REQUESTED ADVICE FROM DEPARTMENT CONCERNING BASIS FOR CLAIMING IMMUNITY ON BEHALF OF NEWLAND.

2. RE PARA 5 REFTEL, STATEMENT IN 2 FAM 221.1 REFLECTS LANGUAGE INTERPRETATION AND APPLICATION OF FEDERAL DIPLOMATIC IMMUNITY STATUTE (22 UCSS252-254) UNDER WHICH DIPLOMATIC AGENTS AS WELL AS MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL AND SERVICE STAFFS OF FOREIGN DIPLOMATIC MISSIONS ACCREDITED TO WASHINGTON ARE ENTITLED TO FULL IMMUNITY FROM BOTH CRIMINAL AND CIVIL JURISDICTION. THIS STANDARD IS MORE LIBERAL IN CERTAIN RESPECTS THAN THAT CONTAINED IN ARTICLES 31 THROUGH 37 OF THE VIENNA CONVENTION DIPLOMATIC RELATIONS, NOW IN FORCE BETWEEN THE U.S. AND NEPAL. UNDER VIENNA CONVENTION, MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF

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OF THE DIPLOMATIC MISSION ARE ENTITLED TO FULL IMMUNITY

FROM THE CRIMINAL JURISDICTION OF THE RECEIVING STATE AND IN ADDITION ARE ENTITLED TO IMMUNITY FROM THE CIVIL JURISDICTION OF THE RECEIVING STATE, BUT ONLY WITH RESPECT TO MATTERS FALLING WITHIN THE SCOPE OF THEIR OFFICIAL DUTIES.

3. RE PARA 4 REFTTEL, IT APPEARS THAT THE MOST SERIOUS ISSUE IS THE POSSIBILITY OF NEWLAND BEING SUBJECTED TO THE CRIMINAL JURISDICTION OF THE RECEIVING STATE IN CONNECTION WITH A TRAFFIC COURT HEARING. UNDER VIENNA CONVENTION, CITED ABOVE, NEWLAND WOULD BE TOTALLY IMMUNE FROM THIS TYPE OF JURISDICTION. REGARDING POTENTIAL CIVIL ACTION, DEPARTMENT FAVORS OUT OF COURT SETTLEMENT THROUGH NEWLAND'S INSURANCE AGENT. DEPARTMENT DOES NOT, HOWEVER, SHARE EMBASSY VIEW THAT APPROACH SHOULD BE MADE TO MFA THAT NEWLAND WAS ENGAGED IN OFFICIAL BUSINESS USING AUTOMOBILE GOING TO LUNCH AND RETURNING TO THE EMBASSY. WERE A SIMILAR CASE TO ARISE IN THE U.S., INVOLVING A MEMBER OF A FOREIGN GOVERNMENT MISSION, DEPARTMENT WOULD ORDINARILY NOT CERTIFY TO THE APPROPRIATE AUTHORITIES THAT THE DRIVING OF AN AUTOMOBILE IS AN OFFICIAL FUNCTION IN A PARTICULAR CASE. FOR EXAMPLE, WHERE CONSULAR OFFICERS ARE ENTITLED TO IMMUNITY ONLY FROM THE JURISDICTION OF THE RECEIVING STATE WITH RESPECT TO MATTERS FALLING WITHIN THEIR OFFICIAL FUNCTIONS, DEPARTMENT USUALLY DEFERS TO THE APPROPRIATE JUDICIAL AUTHORITY TO DETERMINE WHETHER THE USE OF THE AUTOMOBILE IN SPECIFIC CASE AN OFFICIAL ACT.

4. DEPT DOES NOT OBJECT TO EMBASSY'S MENTION FACT THAT NEPALESE NON-DIPLOMATIC OFFICER IN U.S. WOULD BE ENTITLED TO FULL IMMUNITY FROM JURISDICTION. EMBASSY IS CAUTIONED, HOWEVER, THAT STANDARD NOW PREVAILING IN THE U.S. IS NOT WIDELY ACCEPTED INTERNATIONAL STANDARD, BUT RATHER REFLECTS EARLIER PRACTICE, NOW SOMEWHAT ARCHAIC. VIENNA CONVENTION IS NOW WIDELY REGARDED AS DECLARATORY CUSTOMARY INTERNATIONAL LAW THESE MATTERS. FYI: DEPARTMENT SUPPORTS AND HAS RECOMMENDED REPEAL 22 USC 252 TO 254 (ENACTED IN 1790). AFTER REPEAL THIS STATUTE, VIENNA CONVENTION WILL BE SOLE STANDARD FOR DETERMINATION IMMUNITY OF MEMBERS OF DIPLOMATIC LIMITED OFFICIAL USE

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MISSIONS. END FYI.

5. DEPARTMENT WISHES TO BE INFORMED FURTHER DEVELOPMENTS THIS CASE. ROGERS

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